IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7843 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VINODCHANDRA KRISHNALAL SHAH

Versus

VIRAMGAM MUNICIPALITY

Appearance:

MR AMIT C NANAVATI for Petitioner No. 1

MR VK JOSHI for Respondent No. 1

Mr.SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/01/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by Mr.V.K. Joshi, learned advocate for respondent no.1, Viramgam

Municipality and Mr.Siraj Gori, learned Asstt. Govt. Pleader for respondent no.2, the Controlling authority under the Payment of Gratuity Act. Mr.Joshi, learned advocate for respondent no.1 filed affidavit in reply which is taken on record.

2. The present petition is filed for the relief that the respondents be directed to release all the retiral benefits of the petitioner including gratuity and encashment of Earned Leave to the petitioner with interest at the rate of 18% per annum. The case of the petitioner is that he was working with respondent no.1, Municipality since 1962. He retired from service on 30.11.1999. Since then his retiral benefits including gratuity and encashment of Earned Leave are pending. Mr.Joshi for the Municipality submitted that respondent no.1 Municipality has paid a sum of Rs.25,000/- as first instalment of gratuity. He is not able to show that this is the only amount which is payable to the petitioner workman towards gratuity. He is also not able to show that the Municipality has paid the amount of encashment of Earned Leave. The only defence which is advanced is the paucity of funds. One of the contentions is that the petitioner workman had filled up necessary application forms after his retirement, only on 30th June 2001 and therefore, the respondent Municipality has paid an amount of Rs.25,000/-, and the remaining amount towards gratuity will also be paid in instalments as early as possible, not later than one year.

3. Taking into consideration the fact that the petitioner workman has retired in 1999 and that he is not paid the amount of gratuity besides encashment of Earned Leave, it requires a mandate from this Court. Therefore, the present petition is allowed. The respondent Viramgam Municipality is directed to make payment of the remaining amount of gratuity and encashment of Earned Leave within the outer limit of four months, i.e. on or before 31.5.2002. As far as interest is concerned, taking into consideration the financial condition of the respondent Municipality as pleaded by the Municipality in its affidavit in reply, instead of interest at 18%, it is directed that interest at the rate of 6% per annum from the date the amounts became due till the date of payment shall be paid to the petitioner workman.

4. The petition is allowed in the above terms. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

(Ravi R. Tripathi, J.)

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